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Situation of human rights in Myanmar

Report of the Secretary-General

Summary

The present report is based upon the good offices efforts undertaken by the Secretary-General and his Special Envoy, Razali Ismail, in attempting to facilitate national reconciliation and democratization in Myanmar, in accordance with General Assembly resolution 58/247 of 23 December 2003. The discussions that the Secretary-General and his Special Envoy have had separately with the Myanmar authorities during the reporting period focused on the need for the latter to make the seven-step road map for democratic transition, announced by Prime Minister General Khin Nyunt on 30 August 2003, a credible vehicle for national reconciliation and democratization by ensuring that it was all-inclusive and transparent from the beginning. During his mission in March 2004, the Special Envoy explained the United Nations position to the Government, Daw Aung San Suu Kyi and the National League for Democracy, as well as to representatives of other political parties and ethnic nationality groups. On 17 May, however, the National Convention was reconvened without the participation of the National League for Democracy and some ethnic nationality political parties. Moreover, Daw Aung San Suu Kyi and her deputy, U Tin Oo, who had been detained after the Depayin incident of 30 May 2003, remained under house arrest. Their status remains unchanged at the time of reporting.

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The Secretary-General is seriously concerned by the absence of an all-inclusive process of national reconciliation and democratization in Myanmar. Recalling the assurances given by the Government of Myanmar to his Special Envoy that the road map process would be all-inclusive, the Secretary-General urges Senior General Than Shwe and other senior leaders of the State Peace and Development Council to use the opportunity presented by the 9 July adjournment of the National Convention to lift, as a matter of priority, the remaining restrictions on Daw Aung San Suu Kyi; to commence a substantive dialogue with her and her party immediately; to take the necessary steps to ensure that the National Convention process is all-inclusive and open; and to ensure that the views of the delegates, including those already articulated by the ethnic nationality ceasefire groups, are adequately taken into account. Those actions, if taken, would provide the basis of a credible forum for a tripartite dialogue among the Government, the National League for Democracy and ethnic nationalities.

In addition, the Secretary-General calls on the countries in the region, and especially the member States of the Association of Southeast Asian Nations, to take a leading role in counselling the State Peace and Development Council to take the aforementioned steps. He also urges the Council to allow his Special Envoy to resume regular visits so that he can help to facilitate national reconciliation and democratization in the country. In that context, the Secretary-General notes with concern that repeated requests for his Special Envoy to be allowed to return to Myanmar (and similar requests made by the Special Rapporteur of the Commission on Human Rights, Paulo Sergio Pinheiro), have, to date, been considered "not convenient" by the Myanmar authorities. Under the circumstances, there can be no escaping the conclusion that Myanmar has not cooperated to the maximum extent possible with the United Nations; consequently, the United Nations facilitation efforts have not been as effective as they could have been. The Secretary-General is nevertheless determined to continue providing his good offices, on the basis of successive General Assembly resolutions and in support of the people of Myanmar, who have hitherto been prevented from enjoying the same benefits of economic, social and political development as their counterparts in neighbouring countries.

I. Introduction

1. The present report is submitted pursuant General Assembly resolution 58/247 of 23 December 2003, entitled "Situation of human rights in Myanmar", in paragraph 7 of which the Assembly requested the Secretary-General to continue to provide his good offices and to pursue discussions on the situation of human rights and the restoration of democracy with the Government and people of Myanmar, including all relevant parties to the national reconciliation process in Myanmar, and to report to the Assembly at its fifty-ninth session and to the Commission on Human Rights at its sixtieth session on the progress made in the implementation of the resolution.

2. As indicated in his previous reports, the role entrusted to the Secretary-General by the General Assembly is specifically that of good offices, as opposed to the fact-finding mandate assigned by the Commission on Human Rights to the Special Rapporteur. In that context, the Assembly, in its resolution 58/247, welcomed the visits to Myanmar during the past year by the Special Envoy of the Secretary-General.

3. In implementation of resolution 58/247, the Special Envoy visited Myanmar from 1 to 4 March 2004. Prior to his visit, certain important developments had taken place, including the announcement by the Government that it would reconvene the National Convention, adjourned in 1996, as the first step in the seven-step road map; the resumption of peace talks between the Government and the rebel group, the Karen National Union (KNU), which has fought the central Government since 1948; and the convening by Thailand of an international meeting of "like-minded" countries to facilitate the implementation of the seven-step road map, a process known as the Bangkok Process. At that meeting, U Win Aung, the Minister for Foreign Affairs, promised those present that there were no plans to push Daw Aung San Suu Kyi or the National League for Democracy (NLD) aside. On 11 February 2004, media reports quoted the Minister as having stated that "there is no foundation for the exclusion of the National League for Democracy — it is still a legal political party" and that "Aung San Suu Kyi will be fully free, able to meet other members of her party and conduct normal political activities before the National Convention convenes". Against that backdrop, the primary objective of the Special Envoy's visit was to assess how the Government's efforts to implement its road map were progressing and to urge the Government to make the process as transparent and all-inclusive as possible.

II. Contents of the discussions

4. During his visit, the Special Envoy met with the Prime Minister, General Khin Nyunt, the Minister of Foreign Affairs, the Minister of Labour, Tin Win and the Deputy Minister of Foreign Affairs, Khin Maung Win. On the NLD side, he met twice with Daw Aung San Suu Kyi at her residence, once with Vice-Chairman Tin Oo, who was also under house arrest, and once with five other members of the NLD Central Executive Committee (CEC), who had been released. He also met with members of the National Unity Party and the United Nationalities Alliance, a group of eight ethnic nationality political parties. The Special Envoy stressed to all the parties that in order to be credible the road map process for a democratic transition in Myanmar should be all-inclusive, open and transparent.

5. Prime Minister General Khin Nyunt assured the Special Envoy that the Government would implement the road map in "good faith", noting that his three senior representatives had had monthly meetings with Daw Aung San Suu Kyi since December 2003. The Prime Minister also stated that he was working hard to include all the parties concerned in the National Convention, but said that he was not able to provide a date for Daw Aung San Suu Kyi's release. Nor was he able to offer a time frame for the road map. With regard to the peace talks with the KNU, the Prime Minister explained that talks were progressing well in general, although some difficulties had surfaced lately. The Special Envoy was unable to meet with Senior General Than Shwe during his mission. For her part, Daw Aung San Suu Kyi expressed her readiness to "turn a new page" and in that context to cooperate with the Government for the good of the people and to discuss with it the NLD position vis-à-vis the road map, including its participation in the National Convention. The Special Envoy subsequently learned that Daw Aung San Suu Kyi had communicated her position to the SPDC, at the highest level, shortly after his departure from Yangon. The representatives of the ethnic nationality political parties expressed their concern that the National Convention being proposed by the Government would be no different from the one suspended in 1996. However, they indicated to the Special Envoy their willingness, in principle, to have discussions with the Government on its road map and to find common ground to work together for its implementation, provided that certain conditions were met, including freedom of speech, freedom of publication, freedom to choose their own delegates and the ability to review the six objectives and 104 basic principles "agreed" at the previous National Convention.

6. The sense of cautious optimism that had arisen from the Special Envoy's mission in March was reinforced by several positive developments that occurred following his departure. Two additional NLD CEC members, Chairman Aung Shwe and Secretary U Lwin, were released from house arrest. The NLD headquarters in Yangon were reopened. Several meetings between Daw Aung San Suu Kyi and the NLD CEC members were allowed to take place at the former's residence. At those meetings, Daw Aung San Suu Kyi and the CEC members reportedly discussed NLD participation in the National Convention, set to reconvene on 17 May.

7. However, that optimism dissipated on 14 May when the Government informed the CEC members that the remaining restrictions on Daw Aung San Suu Kyi and the NLD would not be lifted. In its statement of 14 May, the NLD announced that it "does not believe that under these circumstances it will be able to benefit the nation by participating in the National Convention. Therefore it has been decided that the NLD will not attend the National Convention." The Secretary-General issued a statement on the same day, urging "all parties concerned, even at this late hour, to make every effort to reach an agreement, taking into account suggestions made by the NLD and by other political and ethnic nationality parties". However, the National Convention was reconvened on 17 May with the participation of the ethnic nationality ceasefire groups, but without the participation of the NLD and some other ethnic nationality political parties, including the Shan National League for Democracy (SNLD), which had won the second largest number of seats in the 1990 elections. The Secretary-General responded by voicing his concern at that development, reiterating the need for Daw Aung San Suu Kyi and NLD Vice-Chairman U Tin Oo to be released and the restrictions on the party to be lifted; and expressing his dismay that, despite assurances given by the Government, the SPDC had not taken those necessary steps.

8. In a letter that reached the Secretary-General a few days later, the Minister for Foreign Affairs explained that the National Convention was composed of all strata of Myanmar society, including representatives of political parties, national races, elected persons and representatives from different walks of life. He maintained that the Government had shown its "sincerity" by inviting the NLD to participate in the National Convention and expressed the Government's disappointment with the decision of the NLD not to take part in the Convention, which, in his view, not only forfeited the opportunity to participate and contribute to the process but also neglected its responsibility to the country. The Minister added that the Government had a responsibility to ensure the prevalence of peace and stability and economic progress and to strengthen the social fabric of the nation so that national unity was enhanced.

9. While acknowledging that the Government had made efforts to bring all parties into the National Convention, the Secretary-General replied by expressing his concern that no commitment to release Daw Aung San Suu Kyi or U Tin Oo was made in the letter. He reiterated that in order for the Government's political road map to be considered a credible and all-inclusive vehicle for democratization and national reconciliation, the remaining restrictions on Daw Aung San Suu Kyi and U Tin Oo should first be lifted and the NLD offices permitted to reopen. Moreover, he stressed that Daw Aung San Suu Kyi's release could help to ensure the stable and orderly implementation of the road map, rather than impede its smooth progress. The Secretary-General also asked for the help of the Minister for Foreign Affairs in facilitating his Special Envoy's return to Yangon. Unfortunately, the authorities responded to that request, and to subsequent, similar requests, by saying that the set of dates proposed was "not convenient" for their national leaders, who were busy with the National Convention. Consequently, the Special Envoy has been denied an opportunity to effectively facilitate dialogue between the Government and Daw Aung San Suu Kyi, as well as the representatives of ethnic nationality groups. The response of the SPDC raises serious questions about its willingness to engage with the United Nations. It also runs contrary to the official position of the Association of Southeast Asian Nations (ASEAN), of which Myanmar is a member, whose foreign ministers, at their past two meetings, have publicly supported the role of the Secretary-General's Special Envoy in helping Myanmar to achieve democratization and have also collectively called for Daw Aung San Suu Kyi's release.

10. With regard to the modalities of the National Convention, of the 1,076 delegates who attended the opening session on 17 May, only a fraction were representatives of political parties and elected representatives, while there was a significant increase in the number of ethnic nationality delegates from the previous Convention. Delegates were reportedly instructed to adhere to the procedures of the Convention, which, among other things, included to follow instructions by the panel of chairmen for each group; to keep news about the proceedings secret until officially released; and to discuss only matters related to the topics being addressed and in line with approved advance proposal papers. It was apparently also made clear to the delegates that the proposals submitted by the delegates would have to be "in consistence with the framework of the six objectives ... and with the 104 basic principles" laid down in the 1993-1996 National Convention. In that context, delegates were said to have been informed that they would work on additional principles for the draft chapters on the legislature, executive and judiciary already laid down in the previous Convention. On 22 May, meetings of the groups began to

prepare proposals on those draft chapters. From 24 June to 9 July, in plenary sessions, delegates from each of the eight groups reportedly read out their proposals for the sharing of power in the legislative, executive and judicial sectors to be included in the new constitution.

11. While the omission of the NLD and some other political parties made it impossible to recognize the National Convention as a complete and credible forum for democratization and national reconciliation in Myanmar, the Convention process provided the ceasefire groups with a venue in which to meet and discuss issues of common concern. A joint proposal was reportedly submitted by 13 ceasefire groups, which proposed that the states and the regions be given more authority to promulgate laws in vital areas, including security and defence, aspects of foreign affairs, border trade, control of natural resources, the preservation of literature and culture and taxation. The joint proposal also suggested that states and regions should have the right to adopt their own constitutions, provided they did not contradict the Union constitution, and to legislate concerning the appointment of civil servants. However, the National Convention authorities reportedly required the ceasefire groups to amend their proposals. The National Convention was adjourned on 9 July. While no date has been indicated as to when it will reconvene, a government statement of 10 July stated that when the Convention resumed, detailed basic principles on the legislative, executive and judiciary, as well as the sharing and distribution of legislative power and the formation of a financial commission, would be laid down in accordance with the consent of the majority of the delegates.

III. Observations

12. The Secretary-General accepts that the Union of Myanmar faces complex and difficult challenges in its transition to democracy and its quest for national reconciliation. For that reason, he cautiously welcomed the announcement by the Government of its seven-stage road map, and acknowledged the potential role that a body such as the National Convention could play in the transition to democracy. However, the Secretary-General has consistently advised that for the process to be credible it has to be all-inclusive and democratic, permitting views to be expressed freely and openly from the beginning. Thus the Secretary-General believes that the National Convention, as currently configured, does not adhere to the recommendations made by successive resolutions of the General Assembly and the Commission on Human Rights. Daw Aung San Suu Kyi and her deputy, U Tin Oo, remain under house arrest. No indication has been provided as to when they will be released. The NLD has been allowed to resume some of its political activities, but other than its headquarters its offices have not been allowed to reopen. Moreover, the SPDC has not responded to efforts by the ethnic nationality ceasefire groups who are in the National Convention or by the NLD and other parties who are outside it, to discuss the pre-set and proposed constitutional principles. A large number of political prisoners also remain in detention despite consistent calls for their release.

13. It is the Secretary-General's firm and unwavering position that, unless the views of the NLD and other political parties on Myanmar's future are sought, considered and acted on, the National Convention and the road map process will be incomplete, lacking in credibility and therefore unable to gain the full support of the international community, including the countries in the region, especially ASEAN member States. At the same time, the Secretary-General believes that the recent

statements and submissions reflecting on the rights and powers to be exercised and shared at the Union and region/state level reportedly made by the ceasefire groups in the National Convention are a positive development, but it remains to be seen what would be accepted by the National Convention authorities. Against this backdrop, the Secretary-General calls on the SPDC to make full use of the National Convention's adjournment by immediately releasing Daw Aung San Suu Kyi, who has expressed her willingness to work with the SPDC for the good of the people, and engaging the NLD and other political parties in substantive dialogue on the next steps, with a view to moving the process of democratization and national reconciliation ahead within a specified time frame. He also urges the SPDC to conclude, in parallel, a mutually acceptable agreement with the above-mentioned ceasefire groups, believing that it would be a positive step towards resolving long-standing conflicts and could provide a basis, albeit incomplete, for national reconciliation and democratization.

14. In the belief that a solution can still be found through dialogue, the Secretary-General further urges the SPDC to allow his Special Envoy to return to Myanmar as soon as possible to continue his facilitation efforts and discuss ways to enhance Myanmar's cooperation with the good offices efforts of the United Nations. He also hopes that countries of the region, especially ASEAN member States, will take a leading role in actively counselling the SPDC to "add substance to the expression of its democratic aspiration", as recommended by the Chairman's statement at the eleventh meeting of the ASEAN Regional Forum, and to accelerate the process of democratization and national reconciliation, by taking the aforementioned steps.

15. Finally, the Secretary-General believes that the SPDC has an obligation to the people of Myanmar to ensure that they experience the same benefits of economic, social and political development as their counterparts elsewhere in the region. Myanmar's citizens have endured unnecessary social and economic hardship because of the absence of an all-inclusive process of democratization and national reconciliation in their country. Their predicament has been compounded by economic policies that have prevented the majority of them from improving their livelihoods. The Secretary-General is firmly of the view that Myanmar's citizens are unfortunate casualties of the prevailing situation. In that context, he wants to take the opportunity to underscore the United Nations system's parallel commitment to investing in Myanmar's long-term future, within the existing constraints, by enhancing the scale and scope of its social and humanitarian engagement with the people and communities across the country. In the event that sustainable progress towards democratization and national reconciliation occurs, the Secretary-General remains committed to taking further, appropriate steps to underpin progress, in partnership with the international community.